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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,138	10/16/2003	Randal Howard Kerstetter III	DN2003175	8238

27280 7590 03/30/2006

THE GOODYEAR TIRE & RUBBER COMPANY  
INTELLECTUAL PROPERTY DEPARTMENT 823  
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AKRON, OH 44316-0001

EXAMINER

MIGGINS, MICHAEL C

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 03/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/687,138

Applicant(s)

KERSTETTER ET AL

Examiner

Michael C. Miggins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 November 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 4-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1 and 4-22 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

**REJECTIONS WITHDRAWN**

1. There are no rejections withdrawn.

**REJECTIONS REPEATED**

2. All of the 35 USC 103 rejections set forth in the non-final rejection of 8/25/05, pages 2-5, paragraphs 1-2 are repeated for the reasons of record.

**NEW REJECTIONS**

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of Schisler et al. (U.S. Patent No. 6,264,178 B1) and Yarnell et al. (EP 1205515, cited in applicant's IDS of 10/16/03).

The rejection of claim 15 from which new claims 21 and 22 ultimately depend can be seen in the non-final rejection of 8/25/05, pages 2-5, paragraphs 1-2.

Schisler discloses an elastomeric base formed from a rubber composition comprising 100 parts by weight of at least one diene-based elastomer selected from natural rubber, synthetic polyisoprene rubber, butadiene and styrene-butadiene rubber

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(since the elastomers listed can be used alone (100 parts) or in a mixture, column 4, lines 11-25).

Yarnell discloses wherein the base further comprises from about 30 to about 60 parts by weight of a filler selected from carbon black and silica (page 5, paragraph [0030])

### **ANSWERS TO APPLICANT'S ARGUMENTS**

5. Applicant's arguments filed 11/28/05 have been carefully considered but are deemed unpersuasive.

Applicant has argued that Yarnell does not disclose the use of metal salts of alpha or beta ethylenically unsaturated carboxylic acid in an elastomeric base but rather their use in an ethylene-alpha-olefin elastomeric composition which is not persuasive since Yarnell describes ethylene-alpha-olefin elastomer reinforced with the metal salts and thus the ethylene-alpha-olefin elastomer reinforced with the metal salts and thus the ethylene-alpha-olefin elastomer is the base.

Applicant has argued that the examiner has given no reason why the composition of Yarnell could be used in a rubber composition comprising elastomer selected from natural rubber, synthetic polyisoprene rubber, butadiene rubber and styrene-butadiene rubber as in the present claims. The reason is simply that Yarnell itself contains elastomer selected from natural rubber, synthetic polyisoprene rubber, butadiene rubber and styrene-butadiene rubber (page 5, paragraph [0027]). The

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argument that these elastomers are optional is not persuasive because the elastomers are clearly mentioned and thus clearly suggest that elements of Yarnell can be used in an elastomeric base comprising elastomer selected from natural rubber, synthetic polyisoprene rubber, butadiene rubber and styrene-butadiene rubber.

Applicant has argued that the elastomeric base of Yarnell includes EPDM.

However, applicant uses the term "comprising" which does not exclude EPDM.

Applicant has argued that there is nothing in Yarnell that would teach or suggest to one skilled in the art that the composition of Yarnell may be used in a plycoat.

However, strong motivation exists to use the elements of Yarnell in a plycoat in that Yarnell exhibits superior adhesion to textile reinforcement materials (paragraph [0001]).

Applicant has argued that one would not consider non-halogenated rubbers in the same family as halogenated rubbers. However, Yarnell considers non-halogenated rubbers and halogenated rubbers (paragraph [0027]).

Applicant claims unexpected results for claims 21 and 22. However, claims 21 and 22 are dependent claims. Furthermore, applicant's results are expected for the composition of Yarnell since Yarnell specifically discloses superior adhesion to textile reinforcement materials (paragraph [0001]).

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

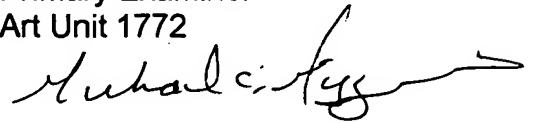
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael C. Miggins  
Primary Examiner  
Art Unit 1772

A handwritten signature in black ink, appearing to read "Michael C. Miggins", with a long horizontal flourish extending to the right.

MCM  
March 20, 2006